HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule.32 (2)(b)

Description of the case.

WPMS No. 4112/01

Srinandan Agrawal,

Vs

The Board of Revenue

Approved for reporting

_____

Not approved for reporting

Date of decision 22.6.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 4112 (MS) OF 2001

(OLD NO. 17210/96)

Srinandan Agrawal,
S/o Deep Chand Agrawal,
R/o Station Road,
Kashipur, Nainital. .....Petitioner.

Versus

1. The Board of Revenue, U.P., Lucknow.
2. The Commissioner, Kumaun Division, Nainital.
3. The Collector, Nainital.
4. The Sub-Divisional Officer, Kashipur, Nainital.
5. The District Industries Centre, Haldwani, Nainital, through its General Manager.
6. The Bank of Baroda, Kashipur Branch, Nainital through Senior Manager.
7. Tehsildar Kashipur, Nainital.
8. M/S Voken Times (India) Pvt. Ltd.
   Stone, Moradabad Road, Kashipur
   District Nainital through its
   Managing Director.

9. Sadhu Pradhanani,
   Managing Director of U.P. Master Watch Industries Pvt. Ltd. Safdarjang Enclave New Delhi, residing at Shankar Bhawan, Model House, Nayagaon (East), Lucknow.

.....Respondents.

Sri Akhilesh Kalra & Sri Paresh Tripathi, Advocate for the petitioner
Standing Counsel, Sri S.K. Jain, Advocate and Sri Rakesh Tapliyal, Advocate for the respondents.

Dated: June 22, 2006

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned order dated 16.12.1995 filed as Annexure No. 14 to the writ petition.

Briefly stated, respondent no. 9, Gopal H. Mulani, Executive Director, Ramesh Pridhnani and Chandra Hot Chand Pridhnani Directors executed an agreement for loan of a sum of Rs. 24,22,400/- from Central subsidy on 3rd October, 1986 with General Manager, District Industries, Haldwani, Nainital i.e. respondent no. 5. Thereafter, the Directors approached the respondent no. 6 to get cash credit facility for another firm M/s Modern Times Pvt. Ltd. The cash credit facility is alleged to have been sanctioned to them on 27.12.1987 by the respondent no. 6.

The respondents no. 8 and 9 had to repay the central subsidy according to agreement-dated 03.10.1986, but they failed to repay the loan as such under the provisions of U.P. Public Money Recovery dues Act, 1972, the certificate for recovery through ordinary/registered. Process have been issued against the respondent no. 5 by the respondent no. 3 for Rs. 8,56,683/- against the respondent no. 8 relating to land of village Hariyawala, Kashipur, Nainital including building constructed on the said land as well as plant and machinery thereof.

Thereafter, on 18.09.1990 a notice under Rule 273 of the U.P. Z.A. and L.R. has been issued for a sum of Rs. 2,56,683/- by the respondent no. 3 against the borrower. The said notice was served through affixation on 27.09.1990. Thereafter again

notice under Rule 282 of U.P. Z.A. and L.R. Rules has been issued on 05.12.1990 by the respondent no. 3 against the borrower fixing 14.01.1991 for auction sale of gata nos. 719/1 (1.58) and 720/2 (2.95) total 2 plots (4.53) of Village Sarvar Khadra, Tehsil Kashipur, Nainital. The process server submitted its report on 02.01.1991.

In compliance to the notice under Rule 282 of U.P. Z.A. and L.R. the respondent no. 7 was authorized to conduct the proceeding of auction sale on 14.01.1991. Extract of auction sale is quoted below:

फर्द निलाम दिनांक ऊ

बकीदार मै0 वोकन टाइम इंण्डियाक्र लिमिटेड इ किमी0 स्टोन मुरादाबाद रोड– काप्रीपुर बकाया धनराप्रि रू0 इइ इं.00 उिद्योग विभागक्र सम्पत्ति का विवरण ग्राम सरवरखेडा तहसील काप्रीपुर में मै0 यू0पी0 मास्टर वाच इन्डस्ट्रीज प्रा0 लि0 काप्रीपुर के नाम पर संक्रमणीय भूमिधरी में दर्ज ख0 न0 इं, इं, इं, इं, इं0, एवं कुल रकवा कृ िं ए एवं उसमें निर्मत चारदीवारी सरकारी बोली रू0 आठ लाखक्र

ऊ श्री श्रीनन्दन अग्रवाल पुत्र

श्री दीपचन्द्र अग्रवाल

स्टेप्रन रोड काप्रीपुर

.....

.....

सबसे उॅची बोली रू0 रू0 सात लाख बीस हजार0क्रश्री श्रीनन्दन अग्रवाल की आयी। प्रयाप्त समय देने पर भी इससे अधिक बोली किसी अन्य ने नही लगाई। नीलाम श्री अभिनन्दन अग्रवाल ने नीलाम की चौथाई धनराप्रि रू एिंक लाख अस्सी हजारक्र तत्काल जमा की जो तहसील नाजरत में रसीद संक्त ए– दिनांक ऊ के द्वारा जमा की गई। श्री श्रीनन्दन अग्रवाल को हिदायत दी गयी कि नीलाम की अवप्रेष धनराप्रि रूक्त इ, पिॅच लाख चालीस हजारक्रनीलाम स्वीकृति की सूचना की प्राप्ति के सात दिन के अन्दर जमा करेंगे अन्यथा चौथाई जमा धनराप्रि जब्त कर ली जायेगी।

In the aforesaid auction sale, the petitioner was the highest bidder for a sum of Rs. 7,20,000/-. The petitioner deposited 1/4th auction money i.e. 1,80,000/- in cash vide receipt no. A-177915 dated 14.01.1991. Thereafter the Naib Tehsildar Kshetra Kunda directed the petitioner to deposit remaining 3/4th auction money i.e. a sum of Rs. 5,40,000/- within seven days from the date of its approval.

On 23.01.1991 the respondent no. 6 filed an application before the respondent no. 2 under Rule 285 (I) of U.P. Z.A. & L.R. Act. The respondents nos. 6 and 9 have prayed that the auction sale dated 14.01.1991 may be set aside and also prayed that further proceeding may be stayed. This application was moved just after 10 days.

Learned counsel for the petitioner has submitted that on the basis of stay application of the respondent no. 6, the respondent no. 2 passed the order to stay the confirmation of sale dated 14.01.1991 vide its order dated 25.01.1991. This order reads as under:

"Heard counsel. It has been argued that the property is mortgaged with the Bank. Let the confirmation of sale be stayed and notice issued to O.P. Stay to be operation till 15.2.91. Fix 9.2.91 for hearing."

The respondent no. 8 has also filed an application under Rule 285 (I) of U.P. Z.A. and L.R. Act before the respondent no. 2 for setting aside the auction sale dated 14.01.1991.

It has been submitted that the respondent no. 2 extended the stay order dated 25.01.1991 from time to time till final disposal of revision pending before him. Ultimately, the respondent no. 2 held vide its order dated 20.06.1991 to the effect that since balance amount i.e. ¾ auction money is not deposited as such there is no sale and the sale was nullity.

The petitioner has challenged the order-dated 20.06.1991 before the Allahabad High Court in a writ petition. The said writ petition has been disposed of on 27.08.1991 and the petitioner was directed to file a revision before the respondent no. 1. The operative portion of the order passed by Allahabad High Court is quoted below:

वर्तमान याचिका की परिस्थितयों में यह आदेप्रित करता हूॅ कि यदि याची आज से 20 दिन के अन्दर चुनौती दिये गये आदेप्र के विरूद्ध राजस्व परिषद के समक्ष निगरानी दाखिल करें तो निगरानी गुणदोष के आधार पर निर्णीत की जायेगी और अवधि के बाहर होने की आपत्ति निगरानी में नही उठाई जायेगी।

उक्त टिप्पणी के साथ याचिका निस्तारित की जाती है।

Accordingly, the petitioner has filed a revision against the order-dated 20.06.1991 before the respondent no. 1 Board of Revenue. The respondent no. 1 ultimately on 28.06.1992 decided the revision aforesaid and stayed the operation of the order-dated 20.06.1991. The operative portion of the order dated 28.6.1992 is quoted below:

इन समस्त परिस्थितियों को देखते हुए मैं आयुक्त कुमायूॅ मण्डल के दिनांक ि्क्रू. ह्रऊ के आदेप्र को निरस्त करता हूॅ। नियम ह्लिइ ईिक्र के अन्तर्गत जिलाधिकारी को यह अधिकार है कि वह विधिक प्राविधानों तथ धर्म और समस्त परिस्थितियों को दृष्टिगत रखते हुए इस सम्बन्ध में न्यायोचित निर्णय लें। जिलाधिकरी अपने अधीनस्थ समस्त राजस्व अधिकारियों को उपरोक्त नियम ह्लिइ ईिक्र के आदेप्रात्मक प्राविधनों से अवगत करये जिससे कि वे भवष्यि में इन प्राविधानों का कठोरता से अनुसरण करें।

After the order darted 28.06.1992 passed by the respondent no.1, the petitioner filed an application-dated 05.06.1992 before the respondent no. 4. Again on 04.07.1992, the petitioner filed an application along with questionnaire to the effect that whether there was any direction to deposit 3/4th auction money, which was replied in negative:

प्रप्रन	उत्तर
क्या प्रार्थी श्रीनन्दन अग्रवाल के प्रार्थना पत्र दिनांक इ.ृ.ह्रि में जो कि नीलामी मूल्य की	महोदय, ि/कृ धनराप्रि नाजरत में जमा करने के आदेप्र नही हुए

र्ि/कृ राप्रि जमा करने बाबत है कोई आदेप्र हक्त तहसीलदार तहसील
आज दिनांक कृह्यह्हि तक करे गये है अथवा काप्रीपुर कृह्यह्हि
नही।

Ultimately, the petitioner has been directed to deposit ¾ auction money, which he deposited on 7.7.1992 vide receipt No. A-585351 for Rs. 3,54,750/-. The auction sale dated 14.1.1991 has been confirmed on 17.7.1992 and sale certificate has been issued in favour of the petitioner on 12.8.1992. Extract of the sale certificate is quoted below:

बकीदार मै0 वोकन टाईम इंडिया लि0 मुरादावाद रोड काप्रीपुर ने जिला नैनीताल से उद्योग ऋण का मुक्त ह्वइ्र्र्ह्हि.क्त रूपये की वसूली के अर्न्तगत बाकीदार की ग्राम सरवर खेड़ा तहसील काप्रीपुर स्थित अचल सम्पत्ति जिसका नीचे दिया गया है को मेरे पूर्वाधिकरी के आदेप्र ऊह्ल.ह्ह.ह्क्त के अनुसार जमीदारी विनाप्र अधिक्त की धारा ह्लि्र के तहत कुर्क की गयी थी और बाकीदार की ग्राम सरवर खेडा स्थित खसरा संख्या ह्यह्हि ह्यह्हि, ह्यह्हि, ह्यमृ0, व ह्यकृऊ कुल कृि की नीलामी नायब तहसीदार कुण्डा द्वारा दिनांक ऊकृऊह्हऊ को की गई जिसमें उच्चतम बोली श्री अभिनन्दन अग्रवाल पुत्र श्री दीपचन्द्र अग्रवाल स्टेप्रन रोड काप्रीपुर की मुक्त कृह्यह्हि.क्त रूपये की प्राप्ति हुई थी। तहसीलदार काप्रीपुर की संस्तुति दिनांक ऊि.ह्यह्हि के अनुसार उच्चतम बोली उत्तप्रक्त जमीदारी विनाप्र अधिनियम की धारा र्िकृ के साथ पठित नियमावली ह्लिइ के अर्न्तगत मेरे द्वारा दिनांक ऊह्यह्यह्हि को स्वीकृत की गई है। केता द्वारा समस्त धनराप्रि जमा की जा चुकी है जिसको तहसीलदार काप्रीपुर द्वारा निर्धारित मद में जमा करा दिया गया है। तहसीलदार काप्रीपुर उच्चतम

.....

.....

Thereafter on 14.08.1992, the possession has been delivered to the petitioner. The extract of certificate of possession is quoted below:

कब्जा प्रमाण पत्र

आज दिनांक ऊकृह्ल.ह्हि को मैं यूत्तप्रीक्त मास्टर वाच इण्डस्ट्रीज लिक्त काप्रीपुर जिला नैनीताल को ग्राम सरवर खेडा तहसील काप्रीपुर जिला नैनीताल स्थित निम्नलिखित सम्पत्ति का परगनाधिकारी काप्रीपुर के आदेप्र दिनांक ऊि.ह्ल.ह्हि जो आदेप्र विक्रय पत्र

दिनांक ऊ.ह.ह में वर्णित है के अनुपालन में क्रेता श्री श्रीनन्दन अग्रवाल पुत्र श्री दीपचन्द्र अग्रवाल नित्क स्टेप्रन रोड काप्रीपुर को निम्नलिखित गवाहान की उपस्थिति में मौके पर दखल दिया।.....

.....

From the above facts it is clear that the auction proceedings have reached to its finality and certificate of sale was issued in favour of the petitioner and physical possession of the land in dispute was also handed over to him but inspite of the finality to the sale proceedings the respondent no. 8 moved another application before the Collector and obtained ex parte stay order against the petitioner. The said stay order has been vacated on 28.10.1992.

Feeling aggrieved against order dated 28.10.1992, he filed a revision being Revision No. 1 of 1992-93 praying therein for quashing the order dated 28.10.1992. Thereafter, the petitioner also filed second revision being Revision No. 2 of 1992-93 against the order dated 12.08.1992 through which the petitioner was given permission to deposit 3/4th auction money.

Against the ex parte order dated 28.10.1992, the respondent no. 8 filed a restoration application, which was registered as Restoration Application No. 3 of 1992-93. The aforesaid revisions and restoration applications were decided on 15.02.1996 and 16.12.1995 respectively.

Petitioner has submitted that he is in physical possession over the property and the auction sale has been confirmed.

Rule 281-I framed under U.P. Z.A. and L.R. Act reads as under:-

"285-I. At anytime within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it, but no sale shall be set aside on such ground unless the applicant proves to the

satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake."

In ***Ram Swaroop Vs. Board of Revenue 1990 RD (H.C., LB-F.B.) 291,*** the Full Bench has held as under:-

"Rule 285-I as extracted above indicates that the Commissioner is to adjudicate certain rights and intrest of the parties in respect of immovable property. The Commissioner is to decide as to whether there was any irregularity which was material in nature or there was mistake in publishing or conducting the sale for which purpose a procedure is prescribed and in case the Commissioner comes to the conclusion that such things existed, he is to set aside the sale. The order so passed by the Commissioner has been made final. Obviously the proceedings so taken b the Commissioner are judicial in nature. Though it could be said that the Commissioner is not sitting as a court to decide the same, and there is no specific provision in this behalf, the Commissioner will be deemed to be sitting in the court and the order passed by the Commissioner will be amenable to the revisional jurisdiction of the Board of Revenue under Sec. 333 of the U.P. Z.A./ and L.R. act which is analogous to Sec. 219 of U.P. Land Revenue Act.

A single Judge of this Court took the view that there was some inconsistency in Indu Engineering and Textiles Ltd. case (supra) and earlier decision on the same point in ***Sudama Prasad v. State of U.P. 1968 R.D. 88*** *and referred the matter to the larger bench and this is how the division bench took cognizance of the case in* ***Nihal Singh v. Board of Revenue 1987 R.D. 308.*** *In Indu Engineering's case (supra), the question was whether Sec. 5 of Indian Limitaiton Act applies to these proceedings and the Commissioner has jurisdiction to enlarge the time during which objection can be*

filed. There is no dispute that Indian Limitation Act will apply before any court of law. The Division Bench was of the view that there was no inconsistency in the two judgments. The Division Bench did not take notice of the fact that this matter has been referred to the larger bench. The Bench was of the view that no revision lies to the Board of Revenue under Sec. 219 of Land Revenue Act. Obviously in regard to the proceedings under U.P. Z.A. and L.R. Act and the Rules framed thereunder, revision will lie under Sec. 333 of the Act and not u/Sec 219 of Land Revenue Act and it appears that the Division Bench did not notice the distinction. The Division Bench took into consideration paragraph 911 and 912 of Revenue Manual and held that these paragraphs do not in terms apply to the instant case but the classification made in the Revenue Manual is on the whole sound and according to the division Bench hearing of case before the Commissioner assumes the character of quasi-judicial in nature and the same does not alter the essence of proceedings as a whole.

Accordingly, we are of the view that the Commissioner while deciding the objection under Rule 285-I of U.P. Z.A. and L.R. Rules will be a 'court' as such and the proceedings taken before him will be deemed judicial proceedings as such and the Commissioner who otherwise is a court under U.P. Z.A. and L.R. Act will be deemed to be a court. We are accordingly of the view that the cases of Indu Engineering (supra) and Nihal Singh (supra) were not correctly decided and are over-rules."

Further the Hon'ble Supreme Court in **Mangu Ram vs. Delhi Municipality,** AIR 1976 SC 105, has held as under:

"There is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29, sub-section (2), is concerned. Whereas, under the Indian Limitation Act, 1908 Section 29, sub-section (2), clause (b) provided that for the purpose of determining any period of

limitation prescribed for any suit, appeal or application by any special or local law, the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which could include Section 5, shall apply insofar as and to the extent to which they are not expressly excluded by such special or local law. Section 29, sub-section (2), clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963, in clear and unambiguous terms, provides for the applicability of Section 5 and the ratio of the decision in Kaushalya Rani case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law, if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani case the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the

language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it. The High Court, in the present case, did not, therefore, act without jurisdiction in holing that the application preferred by the Municipal Corporation of Delhi was not barred by the time limit of sixty days laid down in sub-section (4) of Section 417 since the Municipal Corporation of Delhi had sufficient cause for not preferring the application within such time limit. The order granting special leave was in the circumstances not an order outside the power of the High Court."

In (2005) 4 SCC 572, Hans Raj Banga vs. Ram Chander Aggarwal, the Apex Court has held that after the property is

auctioned and the sale having been confirmed a valid title passes to the purchaser. The observations are quoted below:

"The bid by way of tender given by the appellant being the highest was accepted. He paid the entire sale consideration. The sale was confirmed in his favour and the sale certificate was issued. Since the property was sold on leasehold basis, the lease deed was executed on 17-10-1963 which was registered on 22-2-1964. The appellant became the owner of the property, the moment full price of the property was paid and the title of the property passed on to him from the day of the confirmation of the sale and the issuance of sale certificate. The High Court, in our view, erred in holding that the issue of ownership was not concluded in the earlier proceedings instituted by the respondents before the Rehabilitation Authorities, the writ petition in the High Court and the appeal in this Court. It also erred in holding that only the question of validity of sale was involved in the earlier proceedings and not of ownership.

It failed to appreciate that the valid sale confers both the title and the ownership rights in the purchaser. After the rejection to the challenge to the sale deed up to this Court, the appellant become the owner of the property in dispute and it cannot be said that even though the sale has been upheld the appellant did not become the owner of the property. The view taken by the High Court is against the law laid down by this Court in Bishan Paul v. Mothu Ram[1] *and also against the fundamental principle of jurisprudence as it is an established fact that a valid sale confirmed by the authorities confers title as well as ownership rights in the purchaser. Valid sale of property and ownership are inseparable and the moment the price is paid and sale is confirmed the purchaser becomes the*

owner. In Bishan Paul case 1 it was held: (AIR p. 1999, para 16)

"16. It seems to us that the matter must be considered on general principles. In this case the highest bid was of the respondent and he paid the full price before the sale in his favour was confirmed. The sale certificate, though issued later, mentioned the date of the confirmation of the sale in his favour. The tenant was asked to attorn to the purchaser from the date of confirmation of sale and thus possession was also delivered on that day. Title, therefore, was not in abeyance till the certificate was issued but passed on the confirmation of sale. The intention behind the rules appears to be that title shall pass when the full price is realised and this is now clear from the new form of the certificate reproduced in Jaimal case. No doubt till the price is paid in full there is no claim to the property, but it seems somewhat strange that a person who has paid the price in full and in whose favour the sale is also confirmed and who is placed in possession should only acquire title to the property from the date on which a certificate is issued to him. There may conceivably be a great deal of time spent before the certificate is granted. In this case the tenant was told to attorn from 3-10-1956 because nothing remained to be done except the ministerial acts of issuing the certificate and getting it registered. Therefore, so far as title was concerned, it must be deemed to have passed and the certificate must relate back to the date when the sale become absolute."

Hon'ble Supreme Court in the case Bishan Paul vs. Mothu Ram AIR 1965 SC 1994 has held that in a auction sale of property, the title to the highest bidder on the property matured

after the sale becomes absolute and not when certificate is issued.

The present writ petition is squarely covered by the decision of the Apex Court in as much as in the present case on 14.1.1991, 1/3 amount of the auction sale was deposited by the petitioner at the spot. The remaining amount was deposited by the petitioner on 7.7.1992. In pursuance of the order passed by the Tehsildar on 14.1.1991 that the amount has to be deposited after 15 days of the confirmation of sale. However, the amount was deposited much before the confirmation of sale. The auction was approved by the Assistant Collector on 17.7.1992 and sale certificate was issued. In compliance of the sale certificate possession of the property in question was delivered to the petitioner vide Possession Certificate dated 14.8.1992. Thus the petitioner has valid title and possession over the property in question. Therefore, the impugned orders passed by the Courts below are without jurisdiction and deserves to be quashed.

In view of above, a writ of certiorari is issued quashing the orders dated 15.02.1996 and 16.12.1995 passed by the Commissioner, Kumaon Division and Board of Revenue respectively.

Accordingly, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

Dated: June 22, 2006

*Dhyani